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HOUSE BILL 891

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

W. Ken Martinez and Michael S. Sanchez

AN ACT

RELATING TO TAX-EXEMPT ORGANIZATIONS; REQUIRING REGULAR  
REPORTING OF CERTAIN CONTRIBUTIONS AND ELECTIONEERING  
COMMUNICATIONS EXPENDITURES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Charitable Solicitations  
Act is enacted to read:

"~~[NEW MATERIAL]~~ REPORTING REQUIREMENTS--ELECTIONEERING  
COMMUNICATION EXPENDITURES.--An entity granted an exemption  
from federal income tax by the United States commissioner of  
the internal revenue service pursuant to Section 501(c) of the  
federal Internal Revenue Code of 1986, as amended, and that  
engages in an electioneering communication shall file a  
disclosure report with the office of the attorney general as  
follows:

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1           A. if the electioneering communication occurs  
2 during the primary election, the entity shall file a report of  
3 activity listing:

4           (1) all expenditures related to the  
5 electioneering communication, the purpose of the expenditure  
6 and the name and address of the person or entity to whom an  
7 expenditure was made;

8           (2) each donation, grant or allocation  
9 received by the entity in excess of five thousand dollars  
10 (\$5,000) and not previously reported, regardless of whether it  
11 is related to the electioneering communication;

12           (3) the name and address of the person or  
13 entity from whom the donation, grant or allocation was  
14 received; and

15           (4) the date the expenditure was made.

16           B. reports during a primary election shall be filed  
17 as follows:

18           (1) by 5:00 p.m. on the second Monday in May a  
19 report of activity occurring after the governor's proclamation  
20 of the election but before the first Monday in May;

21           (2) by 5:00 p.m. on the Thursday before the  
22 day of the primary election a report of activity occurring on  
23 or after the first Monday in May but before 5:00 p.m. on the  
24 Tuesday before the day of the primary election; and

25           (3) by 5:00 p.m. on the thirtieth day after

1 the primary election a report of activity occurring after 5:00  
2 p.m. on the Tuesday before the day of the primary election but  
3 before the day after the primary election and not previously  
4 reported;

5 C. if the electioneering communication occurs  
6 during the general election, the entity shall file a report of  
7 activity listing:

8 (1) all expenditures related to the  
9 electioneering communication, the purpose of the expenditure  
10 and the name and address of the person or entity to whom the  
11 expenditure was made;

12 (2) each donation, grant or allocation  
13 received by the entity in excess of five thousand dollars  
14 (\$5,000) and not previously reported, regardless of whether it  
15 is related to the electioneering communication;

16 (3) the name and address of the person or  
17 entity from whom the donation, grant or allocation was  
18 received; and

19 (4) the date the expenditure was made;

20 D. reports during a general election shall be filed  
21 as follows:

22 (1) by 5:00 p.m. on the second Monday in  
23 October a report of activity occurring after the primary  
24 election but before the first Monday in October;

25 (2) by 5:00 p.m. on the Thursday before the

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1 day of the general election a report of activity occurring on  
2 or after the first Monday in October but before 5:00 p.m. on  
3 the Tuesday before the day of the general election; and

4 (3) by 5:00 p.m. on the thirtieth day after  
5 the general election a report of activity occurring after 5:00  
6 p.m. on the Tuesday before the day of the general election but  
7 before the day after the general election and not previously  
8 reported;

9 E. reports required by this section shall be filed  
10 electronically by all reporting entities;

11 F. reporting entities may apply to office of the  
12 attorney general for exemption from electronic filing in case  
13 of hardship, which shall be defined by office of the attorney  
14 general; and

15 G. the office of the attorney general shall ensure  
16 that, to the greatest extent practicable, the information  
17 required to be disclosed under this subsection is publicly  
18 available through the office of the attorney general web site  
19 in a manner that is searchable, sortable and downloadable."

20 Section 2. Section 57-22-3 NMSA 1978 (being Laws 1983,  
21 Chapter 140, Section 3, as amended) is amended to read:

22 "57-22-3. DEFINITIONS.--As used in the Charitable  
23 Solicitations Act:

24 A. "charitable organization" means ~~[any]~~ an entity  
25 that has been granted exemption from the federal income tax by

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1 the United States commissioner of internal revenue as an  
2 organization described in Section 501(c)(3) of the Internal  
3 Revenue Code of 1986, as amended, or identifies itself to the  
4 public as having a charitable purpose;

5 B. "charitable purpose" means a benevolent, social  
6 welfare, scientific, educational, environmental, philanthropic,  
7 humane, patriotic, public health, civic or other eleemosynary  
8 objective or an activity conducted in support of or in the name  
9 of law enforcement officers, firefighters or other persons who  
10 protect public safety;

11 C. "contribution" means the promise, grant or  
12 pledge of [~~any~~] money, credit or property of any kind or value  
13 provided to a charitable organization in response to a  
14 solicitation, but does not include program service revenue or  
15 bona fide membership fees, dues or assessments; provided that  
16 bona fide membership fees, dues or assessments do not include  
17 contributions made in exchange for membership in a charitable  
18 organization unless membership confers rights and benefits in  
19 addition to receiving literature of the charitable  
20 organization;

21 D. "educational institution" means:

22 (1) an entity organized and operated primarily  
23 as a school, college or other instructional institution with a  
24 defined curriculum, student body and faculty, conducting  
25 classes on a regular basis; and

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1 (2) auxiliary entities, including parent-  
2 teacher organizations, booster and support clubs that support,  
3 encourage or promote a school, college or other instructional  
4 institution and its defined curriculum, student body, faculty,  
5 facilities or activities;

6 E. "electioneering communication":

7 (1) means any radio, television, cable or  
8 satellite broadcast and any print advertisement, including  
9 direct or bulk mailings, that:

10 (a) refers to a clearly identified  
11 candidate for state office;

12 (b) is made during a primary or general  
13 election for the office sought by the candidate; and

14 (c) is targeted to the relevant  
15 electorate; and

16 (2) does not include a communication appearing  
17 in a news story, commentary or editorial distributed through  
18 the print media or the facilities of any broadcasting station,  
19 unless such facilities or print media are owned or controlled  
20 by any political party, political committee or candidate;

21 F. "general election" means the period beginning on  
22 the day after the primary election and ending on the day of the  
23 general election;

24 G. "primary election" means the period beginning on  
25 the day of the governor's proclamation of the election and

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1 ending on the day of the primary election;

2           [~~F-~~] H. "professional fundraiser" means a person  
3 that solicits or employs or directs others to solicit  
4 contributions from the public on behalf of a charitable  
5 organization in exchange for compensation and has custody or  
6 control of the contributions; provided that "professional  
7 fundraiser" does not include a director, officer, bona fide  
8 employee or salaried officer, volunteer, attorney, accountant  
9 or investment counselor of a charitable organization;

10           [~~F-~~] I. "professional fundraising counsel" means a  
11 person that provides services or employs or directs others to  
12 provide services for compensation to a charitable organization  
13 in the solicitation of contributions, including managing or  
14 preparing materials to be used in conjunction with [~~any~~] a  
15 solicitation; provided that the person does not:

16                           (1) directly solicit contributions; or  
17                           (2) receive, have access to or control any  
18 contribution received in response to the solicitation; provided  
19 further that "professional fundraising counsel" does not  
20 include a director, officer, bona fide employee or salaried  
21 officer, volunteer, attorney, accountant or investment  
22 counselor of a charitable organization;

23           [~~G-~~] J. "religious organization" means a church,  
24 organization or group organized for the purpose of divine  
25 worship or religious teaching or other specific religious

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1 activity or any other organization that is formed in  
2 association with or to primarily encourage, support or promote  
3 the work, worship, fellowship or teaching of the church,  
4 organization or group; and

5 [H.] K. "solicit" or "solicitation" means [~~any~~] a  
6 communication requesting a contribution or offering an  
7 opportunity to participate in a game of chance, raffle or  
8 similar event with the representation that the contribution or  
9 participation will support a charitable purpose, and includes:

10 (1) [~~any~~] a verbal request made in person or  
11 by telephone, radio, television, electronic communication or  
12 other media;

13 (2) [~~any~~] a written or published request  
14 mailed, sent, delivered, circulated, distributed, posted in a  
15 public place, advertised or communicated through any medium to  
16 the public;

17 (3) [~~any~~] a sale or an attempt to sell a good  
18 or service; and

19 (4) [~~any~~] an invitation to attend an assembly,  
20 event, exhibition, performance or social gathering of any kind.

21 A contribution is not required for a solicitation to have  
22 occurred, and "solicit" or "solicitation" does not include  
23 direct grants or allocation of funds received or solicited from  
24 [~~any~~] an affiliated fundraising organization by a member agency  
25 or unsolicited contributions received from [~~any~~] an individual

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1 donor, foundation, trust, governmental agency or other source,  
2 unless such contributions are received in conjunction with a  
3 solicitation drive."

4 Section 3. Section 57-22-4 NMSA 1978 (being Laws 1983,  
5 Chapter 140, Section 4, as amended) is amended to read:

6 "57-22-4. APPLICATION OF ACT.--

7 A. Except for the reporting requirements for entities  
8 that engage in electioneering communications, the Charitable  
9 Solicitations Act shall not apply to a religious organization,  
10 even if it is a charitable organization.

11 B. Exempt from the registration and reporting  
12 requirements of the Charitable Solicitations Act, other than  
13 the reporting requirements for entities that engage in  
14 electioneering communications, are:

15 (1) educational institutions and organizations  
16 defined in Section 6-5A-1 NMSA 1978; and

17 (2) persons soliciting for an individual or  
18 group that has suffered a medical or other catastrophe and:

19 (a) the individual or group is identified by  
20 name at the time of the solicitation;

21 (b) the purpose for the solicited  
22 contribution is clearly stated; and

23 (c) the gross contributions collected,  
24 without any deductions for or by the solicitor or any other  
25 person, are deposited directly to an account in the name of the

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1 individual or group in a local federally insured financial  
2 institution established for that sole purpose and solely used  
3 for the direct benefit of the named individual or group as  
4 beneficiary.

5 C. The Charitable Solicitations Act shall apply to  
6 charitable organizations and professional fundraisers."

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